

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (Cr.) No.193 of 2021**

XYZ, through her Father, (name & details wrongly mentioned in the order of Trial Court) Police Station Nandghat, District Bemetara (C.G.)

---- Petitioner

**Versus**

1. State of Chhattisgarh, Through the Chief Secretary, Mantralaya, Naya Raipur, District Raipur (C.G.)
2. The Secretary, Department of Home, Mantralaya, Naya Raipur, District Raipur (C.G.)
3. The Secretary, Department of Health, Mantralaya, Naya Raipur, District Raipur (C.G.)
4. Superintendent of Police, Bemetara, District Bemetara (C.G.)
5. Thana Incharge, P.S. Nandghat, District Bemetara (C.G.)
6. Chief Medical Health Officer, District Hospital Bemetara, District Bemetara (C.G.)
7. Chhattisgarh Institute of Medical Sciences, through the Medical Superintendent, Bilaspur, District Bilaspur (C.G.)

---- Respondents

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For Petitioner: Mr. Prateek Sharma, Ms. Prakritee Jain and  
Mr. Nishant Bhanushali, Advocates.

For Respondents/State: -  
Mr. Sunil Otwani, Additional Advocate General and  
Mr. Jitendra Pali, Deputy Advocate General.

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order On Board**

**16/03/2021**

1. The petitioner is a minor rape victim and offence against her is subject matter of first information report registered under Crime No.66/2021 at Police Station Nandghat, District Bemetara for offences punishable under Sections 376, 376(2)(n), 506 of the

IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2002, and the matter is being investigated by the jurisdictional police. It is the case of the petitioner that she is a minor rape victim of the aforesaid offence carrying pregnancy of 19-20 weeks and she has filed this petition for directing the respondents to terminate her pregnancy. The writ petition was taken-up for hearing on 10-3-2021 and by order dated 10-3-2021, a Medical Board was directed to be constituted which is as follows: -

“In view of the above and since the victim is said to be present at Bilaspur, a Medical Board be constituted consisting of Dean, CIMS, Bilaspur; two senior gynecologists available in the hospital; a Radiologist; and a Psychiatrist and other doctors as per the opinion of the Dean, CIMS, who shall examine the petitioner on the following aspects: -

1. Examination report of the patient with regard to her physical and mental stage.
2. Stage of pregnancy.
3. Over all condition of foetus.
4. How far the termination of pregnancy will be detrimental to the petitioner.
5. How far it will be detrimental, if the petitioner is allowed to complete full term of pregnancy.
6. Investigation reports.”

2. Pursuant to the order passed by this Court, the Chhattisgarh Institute of Medical Sciences (CIMS), Bilaspur, submitted its medical report on 11-3-2021 along with other reports. The medical examination report of the petitioner states as under: -

“E. The findings of the evaluation of XYZ on the above aspects are as follows: -

1. General physical examination of the patient

revealed thin build, conscious and oriented, mild pallor and her vital functions are stable. Systemic examination suggested no significant abnormality. Per abdomen examination showed soft, relaxed abdomen with uterus size of 18-20-week gestation. Her mental status assessment showed that she was able to discuss about her pregnancy and incident adequately, rapport could be established. Her speech was relevant, coherent and goal-directed, mood was irritable when discussed about pregnancy and incident, no formal thought abnormality, no perceptual abnormality. She expressed her wish to terminate the pregnancy and did neither want to go through full term pregnancy nor take the responsibility of bringing up a child.

2. Second trimester of pregnancy, 18-20 weeks of gestation clinically.
3. USG findings suggest single live intrauterine foetus of gestational age 19 week 3 days. No obvious anomaly detected in the present scan.
4. The physical and mental status assessment of the patient suggest that patient is medically fit to undergo Medical Termination of Pregnancy. However, the risk and complications associated will have to be accounted for as in all MTP.
5. Patient XYZ has made the application before the Hon'ble High Court and willing to get terminated and she was again asked to review her decision. She remains firm with her decision and is unwilling to complete full term of pregnancy. The consideration of her age, requirement of Blood Transfusion in the past with Hb electrophoresis report being awaited and the inherent complications (physical as well as mental) of pregnancy and delivery cannot be overlooked.
6. Investigation reports revealed no significant abnormality. (Enclosed 9 pages, Investigation report of Hb electrophoresis for Sickle Cell Disorders in awaited)"

3. Mr. Prateek Sharma, learned counsel for the petitioner, would submit that the petitioner is a minor rape victim and by virtue of

Explanation 1 to sub-section (2) of Section 3 of the Medical Termination of Pregnancy Act, 1971 (for short, 'the Act of 1971'), pregnancy caused to the petitioner is on account of rape and anguish caused to her by such pregnancy shall be presumed to constitute a grave injury to her mental health and therefore it is a fit case where appropriate direction can be issued for termination of pregnancy of the petitioner in the light of the decision of the Supreme Court in the matter of **Z v. State of Bihar and others**<sup>1</sup>.

4. Mr. Sunil Otwani and Mr. Jitendra Pali, learned State counsel, would bring to the notice of the Court the relevant provisions and authorities in respect of termination of pregnancy. Mr. Otwani, learned Additional Advocate General, would bring to the notice of the Court that offence under Section 376 of the IPC has been registered against the accused person namely Dinesh Verma and the petitioner herein is victim in that case and investigation is being carried out.
5. I have heard learned counsel for the parties and considered the submissions made herein-above and also went through the medical report and other reports with utmost circumspection.
6. Section 3(2) of the Act of 1971 provides as under: -

**“3. When pregnancies may be terminated by registered medical practitioners.—(1) xxx xxx xxx**

**(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,—**

**(a) where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or**

<sup>1</sup> (2018) 11 SCC 572

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are,

of opinion, formed in good faith, that—

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

*Explanation 1.*—Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

*Explanation II.*—Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.”

7. Explanation 1 appended to sub-section (2) of Section 3 of the Act of 1971 would show that where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman. Explanation 1 to sub-section (2) of Section 3 of the said Act was subject matter of consideration before the Supreme Court in Z (supra) in which their Lordships have clearly held that Explanation 1 provides statutory presumption and the same comes within the compartment of grave injury to mental health. It has been observed in para 21 as under: -

“21. We have underlined the relevant part of the provision for the purpose that where length of pregnancy exceeds 12 weeks but does not exceed 20 weeks, two registered medical practitioners, after forming an opinion in good faith, that the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health and that there is substantial risk that if the child were born, it would suffer from physical or mental abnormalities as to be seriously handicapped, may terminate the pregnancy. Explanation 1 to sub-section (2) of Section 3 to which our attention has been drawn postulates that where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the same has to be presumed to constitute a grave injury to the mental health of the pregnant woman. Once such a statutory presumption is provided, the same comes within the compartment of grave injury to mental health. Sub-section (4) of Section 3 requires consent of the guardian of a minor, or a major who is mentally ill person. The opinion to be formed by the medical practitioners is to be in good faith.”

8. In the matter of Suchita Srivastava and another v. Chandigarh Administration<sup>2</sup>, the High Court of Punjab and Haryana ruled that it was in the best interests of a mentally retarded woman to undergo an abortion. The victim had become pregnant as a result of an alleged rape that took place when she was an inmate at a Government-run welfare institution located in Chandigarh. In that context, it was observed by their Lordships of the Supreme Court as under: -

“19. The victim’s reproductive choice should be respected in spite of other factors such as the lack of understanding of the sexual act as well as apprehensions about her capacity to carry the pregnancy to its full term and the assumption of maternal responsibilities thereafter. We have adopted this position since the applicable statute clearly contemplates that even a woman who is found to be “mentally retarded” should give her consent for the

termination of a pregnancy.

22. There is no doubt that a woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a "compelling State interest" in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the MTP Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices."

9. Reverting to the facts of the present case, it is quite vivid that on the report of the petitioner herein offences punishable under Sections 376, 376(2)(n), 506 of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2002 have been registered against the accused and the petitioner is minor rape victim of that offence. Admittedly, on the medical examination of the petitioner on 11-3-2021, it was found that she was carrying pregnancy of 19 weeks 3 days. Report of the team of medical experts would show that USG findings suggest single live intrauterine foetus of gestational age 19 week 3 days and no obvious anomaly has been detected in the scan. It has also been stated that physical and mental status assessment of the

petitioner suggest that she is medically fit to undergo Medical Termination of Pregnancy, however, risk and complications associated will have to be accounted for as in all MTPs. However, other reports are normal.

10. Since the petitioner is a minor rape victim and by virtue of Explanation 1 to sub-section (2) of Section 3 of the Act of 1971, anguish and trauma suffered by the petitioner would constitute a grave injury to her mental health and as held by their Lordships of the Supreme Court in Z (supra), considering the medical report noticed herein-above, the requirement of law read with Explanation 1 and following the principle of law laid down by the Supreme Court in Suchita Srivastava (supra), it is a fit case to direct termination of pregnancy of the petitioner subject to her consent and also consent of her parents i.e. father or mother (either of them).

11. Accordingly, a team of five doctors consisting of Dean, CIMS; two senior gynecologists available in the hospital; one Radiologist; one Clinical Psychiatrist; and one Anesthetist, etc shall consider the feasibility of termination of pregnancy of the petitioner at this gestational age. The writ petition is allowed with following directions: -

1. The petitioner to remain present at CIMS, Bilaspur on 18-3-2021 so that termination of pregnancy can be carried out on 19-3-2021 or on the suitable day by a team of doctors consisting of Dean, CIMS; two senior gynecologists available in the hospital; one Radiologist; one Clinical Psychiatrist and one Anesthetist. The Dean of CIMS is directed to make all such arrangements if the petitioner and her parents i.e. father or mother (either of them) give consent in the prescribed proforma under the Act of 1971

and the rules made thereunder.

2. The termination of pregnancy of the petitioner will be supervised by the above-stated Medical Board who shall maintain complete record of the procedure which is to be performed on the petitioner for termination of her pregnancy.
  3. The hospital authorities shall take necessary tissues of foetus for DNA identification.
  4. The Collector, Bilaspur shall provide all necessary facilities to the petitioner and her parents in order to carry out the termination and all necessary expenses will be borne by the State in this regard.
  5. On being informed, the Collector, Bilaspur shall make necessary arrangements for journey of the petitioner and her parents from Bilaspur to their home after her discharge from hospital.
  6. The petitioner will be allowed all medical and requisite facilities till she is medically fit even after the termination of pregnancy.
12. A copy of this order be sent to the Dean, CIMS, Bilaspur and Collector, Bilaspur directly by fax and e-mail by today itself and through Mr. Sunil Otwani, Additional Advocate General, today itself so that he or she can make arrangements as directed.
13. No order as to cost(s).
14. Certified copy today to the parties.

Sd/-  
(Sanjay K. Agrawal)  
Judge